IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No.30 of 1998.
Judgment Reserved on: 21.06.2007
Date of decision: 29.06.2007.

H.P. Financial Corporation ….**Appellant**

Versus

M/s Ajay Saw Mill and Another ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Appellant: **Mr.Ajay Kumar, Advocate.**

For the Respondents: **Mr.Bhupender Gupta, Senior Advocate with Mr.Neeraj Gupta, Advocate.**

Dev Darshan Sud, J.

This appeal has been filed by the plaintiff against the judgment of the learned District Judge, whereby only a part of the claim of the plaintiff-appellant has been allowed.

The plaintiff filed a suit against the defendants on the allegation that a loan of Rs.74,000/- had been advanced to them for purchase of land, plant and machinery etc. and for setting up an Industrial Unit for manufacturer of Wooden Boxes at village Maghara, Tehsil Rampur Bushahr, District Shimla. The loan was subject matter of agreements dated 4.12.1981 and 16.11.1983. According to the plaintiff, a deed of hypothecation was also executed

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

by the defendants. A number of demands were made on the defendants for repayment of the loan, but of no avail and on 20.2.1991 a sum of Rs.2,41,477.10 paise was due and outstanding from the defendants. Written statement was filed by the defendants resisting the suit on a number of grounds. The suit was initially instituted in this Court, but with the increase in the pecuniary jurisdiction on the original side, the suit was transferred to the Court of learned District Judge, who, by its judgment dated 9.6.1997, partly decreed the suit of the plaintiff for a sum of Rs.55,000/- alongwith interest at the agreed rate from 2.6.1988 till the date when the entire decree is satisfied. While deciding issue No.1 which dealt with the point of limitation, the learned trial Court held that the loan was agreed to be paid in 16 monthly installments in accordance with the Schedule-II of the agreement vide Ex.PD/2. The first installment was to be paid from 10.12.1983 and the last on 10.6.1991. The first loan agreement related to a sum of Rs.64,000/- and second loan agreement for Rs.10,000/- (Ex.PG/2). The first installment was to commence on 10.6.1984 and last on 10.6.1991. The learned Court, on the basis of a notice, dated 5.3.1988, served by the plaintiff on the defendants, held that the suit was governed under Article 37 of the Limitation Act and as such the suit regarding part of the installments payable was not within time and therefore, no decree can be granted qua this amount. Submission of the learned counsel appearing for the plaintiff that the suit was governed by

Article 62 of the Limitation Act, as land had been mortgaged with the plaintiff, did not find favour as the learned trial Court held that there was no allegation in the plaint regarding this fact.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel has drawn my attention to Ex.PO which is a communication dated 2.6.1989 addressed by the defendant No.2 to the Managing Director of the Financial Corporation. It reads:_

> *"In connection with your letter dated 23.5.1989 fixing 7th June, 1989 for take over of my above unit on account of default committed in the repayment loan dues of the Corporation, I venture to meet your good-self with the request that as in the apple season during current year, I expect to work and generate funds, the take over fixed for 7.6.1989 may kindly be deffered.*
>
> *I do not deny that the loan of Rs.74,000/- taken by me from the Corporation has gone into default and now the outstanding loan by adding the interest upto 9.12.1988 has risen to about Rs.1,68,000/-, involving a huge amount of default, but my unit being a very small unit in the remote area, I cannot stand at par with normal industrialists for the reason that during the last two years due to failure of apple crop I could not operate and earn from my industry.*

> *In view of above, I again pray for not taking over my unit on 7.6.1989 and allowing me to start repaying the amount by monthly installments from August, 1989 with a start of Rs.1,500/-, which I assure you to increase with working coming into progress".*

He has also drawn my attention to the statement of the defendant, who has appeared as DW-1 on 14.5.1997 and states:

> *"I owe the money demanded by the plaintiff through the present suit, but as regards the liability for interest, I am liable to pay simple interest only and not compound interest as demanded by the plaintiff. I could not repay the loan because the business had to be closed down two years after the setting up of the Unit".*

I have considered the rival contentions of the parties. The learned trial Court was in clear error in ignoring the acknowledgements which had been made by the defendant acknowledging the liability of the debt to the plaintiff. In Ex.PO, he clearly admits his liability in unequivocal terms stating that he does not deny availing of the loan and acknowledges that the balance of Rs.1,68,000/- would be due and outstanding as on 2.6.1989. Similarly, when he steps into the witness box on 14.5.1997, he admits that he owes money to the plaintiff but states that he

is only liable to pay simple interest and not compound interest. Section 25(3) of the Indian Contract Act, 1872 clearly recognizes a promise to pay a time barred debt. The Act provides:

> "*25. … … … … … An agreement made without consideration is void, unless-*
> *(1) … … … … … … …*
> *(2) … … … … … … …*
> *(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits"*

The suit was instituted on 26th April, 1991 which would be within a period of three years from 1989 when the liability was acknowledged. Statement on oath made by the respondent-defendant acknowledging and accepting the amount due and payable except the interest liability cannot be ignored. According to Section 17 of the Indian Evidence Act, 1872 admission is the best form of proof unless it is explained away. ***(See: Ramji Dayawala & Sons (P.) Ltd.*** *vs.* ***Invest Import, AIR 1981 SC 2085).*** The learned trial Court could not ignore these two facts. The basis on which the respondent claimed that the interest is to be paid on simple interest basis, has not been brought on record

either in the form of documentary record or from any other material and as such this claim cannot be sustained.

In the circumstances this appeal is allowed. The judgment and decree of the learned trial Court is modified. The plaintiff-appellant will be entitled to the entire amount as claimed in the suit alongwith costs and interests. A decree be drawn in the terms as aforesaid.

June 29, 2007
(aks)

(Dev Darshan Sud)
Judge.